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March 13, 2017

The Honorable Gina McCarthy
Administrator
The Environmental Protection Agency
Office of the Administrator 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Lance R. LeFleur, Director
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

Ronald G. McClain, President, Products Pipelines
Plantation Pipe Line
1001 Louisiana St., Suite 1000
Houston, TX 77002

Steven J. Kean, CEO
Kinder Morgan
1001 Louisiana St., Suite 1000
Houston, TX 77002

Re: Notice of Intent to File Citizen Suit Pursuant to the Federal Clean Water Act

Dear Administrator McCarthy and Gentlemen:

The purpose of this letter is to notify Plantation Pipeline and Kinder Morgan (collectively, "Plantation") that William Upton and Winwood Land Holdings, LLC intend to file suit in sixty (60) days under 33 U.S.C. § 1365(a)(1) of the federal Clean

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Water Act ("CWA") in United States District Court against Plantation Pipeline and Kinder Morgan for violations of the CWA arising out of a Plantation Pipeline Company's pipeline failure and the continuing ecological destruction of waters of the United States.

Furthermore, under Clean Water Act § 404, one must obtain a permit from the Army Corps of Engineers prior to placing dredge and fill material into waters of the United States. It has come to our attention Plantation Pipeline placed dredge and fill material into surface streams and wetlands onto the subject properties prior to obtaining a permit from the Army Corps of Engineers. Effectively, this has turned the surface waters and wetlands on the properties at issue into a waste ground, and robbed the citizens at issue of meaningful notice and comment. Plantation Pipeline's violated Clean Water Act § 404 by introducing dredge and fill material into waters of the United States prior to obtaining a permit from the Army Corps of Engineers.

William Upton and Winwood Land Holdings, LLC (hereinafter referred to collectively as "Winwood"), are owners of real property in Shelby County, Alabama, and their land has been and continues to be contaminated by gasoline from the Plantation/Kinder Morgan pipeline spill. The spill occurred within the Plantation Pipeline Company's Right of Way (ROW) adjacent to the Winwood properties. More specifically, on the date mentioned above, an old improperly repaired and improperly inspected dent failed on a Plantation pipeline segment and the resulting rupture released tens of thousands of gallons of gasoline in the vicinity of Double Mountain in Shelby County, Alabama. Instead of Plantation and Kinder Morgan identifying the leak and taking proactive measures to notify local residents and repair the problem, a neighbor smelled gasoline then complained to the authorities about the increasingly strong odor of gasoline polluting the valley until eventually action was taken.

While Plantation and Kinder Morgan entities repaired their leaking pipeline and began clean up efforts, these entities and/or their contractor efforts have been deficient. Gasoline and constituents continue to pollute the Winwood properties, groundwater and other waters of the United States including tributaries to the Cahaba River. As recently as April of 2016, Plantation has reported to ADEM that gasoline and gasoline constituents are migrating onto and under the Winwood properties. ADEM has ordered Plantation to drill additional monitoring wells on the Winwood properties during 2017.

Violations of the Clean Water Act

Under § 301 (a) of the CWA, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source into waters of the United States except in compliance with a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to § 402 of the CWA, 33 U.S.C. § 1342. Plantation has violated and is violating § 301(a), because it does not have a permit authorizing the discharge of gasoline from the Plantation pipeline to waters of the State of Alabama and the United States, including the major watersheds, including the Double Oak Mountain pollution site which encompasses the Cahaba River to the east. These watersheds are fed by unnamed tributaries from the Winwood properties that flow into Peavine Creek, a major tributary of the Cahaba River and other tributaries that flow into the Coosa River. The Plantation CWA violation is ongoing as long as the gasoline remains in the areas from which it is carried into the waters mentioned above.

Plantation is also in violation of certain Alabama State statutes as listed below, intended to protect the waters of the state, as well as the United States, as impacted from the State of Alabama. Pursuant to the federal Clean Water Act, the State of Alabama is vested with the authority to effectuate the purposes of the federal Clean Water Act through the implementation of the NPDES requirements. Under Ala. Admin. Code r. 335-6-6-.03, it is unlawful for any person to “discharge pollutants into waters of the state without first having obtained a valid NPDES permit.” Thus, any discharge that is not in compliance with the comports of the NPDES program is a violation of both the federal Clean Water Act as well as Alabama state law.

To date, only 340 barrels of 919 reported barrels of gasoline have been recovered at the spill site, but a much larger and more significant amount of gasoline remains below the surface and has migrated, or is migrating, into the waters of the State of Alabama and of the United States.

Violations of Water Quality Standards

The Demopolis Reservoir, including Lake Demopolis, the Lower Tombigbee River Basin and its tributaries are impacted by Plantation’s unlawful discharge of

gasoline. These water bodies, including Peavine Creek and the Cahaba River have been designated for the uses of a Public Water Supply, Swimming and Other Whole Body Contact Sports, and Fish and Wildlife. *See* Ala. Admin. Code r. 335-6-10.03; *see also* Waterbody Segments Classified as Public Water Supply, p. 2., available at <http://www.adem.state.al.us/programs/water/waterforms/OAWClassifiedPublicSupply.pdf>. As a result, Plantation is in violation of the of both the federal Clean Water Act and Alabama's Specific Water Quality Criteria water quality criteria for each of the aforementioned designated uses set forth in Ala. Admin. Code r. 335-6-10.03 and requirements imposed by Ala. Admin. Code r. 335-6-10.09. In addition, Plantation is in violation of Alabama's Antidegradation Policy and the Minimum Conditions Applicable to All State Waters as set forth in Regulations 335-6-10-.04, 335-6-10-.06, respectively.

Reg. 335-6-10-.04: Antidegradation Policy

- (1) The purpose and intent of the water quality standards is to conserve the waters of the State of Alabama and to protect, maintain and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses; and to provide for the prevention, abatement and control of new or existing water pollution.
- (2) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. Uses and the water quality to support such uses were established through public participation in the initial establishment, and periodic review, of water quality standards. Should the Department determine that an existing use is not encompassed in the classification of a waterbody, that use shall be recognized.
- (3) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected, except that a new or increased discharge of pollutants may be allowed, after intergovernmental coordination and public participation pursuant to applicable permitting and management processes, when the person proposing the new or increased

discharge of pollutants demonstrates that the proposed discharge is necessary for important economic or social development. In such cases, water quality adequate to protect existing uses fully shall be maintained. All new and existing point source discharges shall be subject to the highest statutory and regulatory requirements, and nonpoint source discharges shall use best management practices adequate to protect water quality consistent with the Department's nonpoint source control program.

Reg. 335-6-10-.06: Minimum Conditions Applicable to All State Waters

The following minimum conditions are all applicable to all State Waters, at all places and at all times, regardless of their uses:

- (a) State waters shall be free from substances attributable to sewage, industrial wastes or other wastes that will settle to form bottom deposits which are unsightly, putrescent or interfere directly or indirectly with any classified water use.
- (b) State waters shall be free from floating debris, oil, scum, and other floating materials attributable to sewage, industrial wastes or other wastes in amounts sufficient to be unsightly or interfere directly or indirectly with any classified water use.
- (c) State waters shall be free from substances attributable to sewage, industrial wastes or other wastes in concentrations of combinations which are toxic or harmful to human, animal or aquatic life to the extent commensurate with the designated usage of such waters.

Thank you for your prompt attention to these on-going serious violations of federal and state water pollution regulations by Plantation Pipeline. Unless the U.S. EPA or ADEM commences and diligently prosecutes an action in court to address these violations within sixty (60) days, we intend to file a citizen suit against Plantation Pipeline under section 505(a) of the Clean Water Act for the violations discussed above, 33 U.S.C. § 1365(a). In addition to these violations, this notice covers all violations of the Clean Water Act evidenced by information which becomes available to us after the date of this Notice of Intent to Sue. Pursuant to the Clean Water Act, we will seek an injunction to order Plantation Pipeline to clean up the polluted waters and cease these violations, and for civil penalties, attorney's fees and costs.

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All communication relating to this matter should be directed to Jeff Friedman at the address and telephone number listed at the top of this letter. Please contact us if you would like to discuss these ongoing violations.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeff Friedman', with a horizontal line extending to the right.

Jeff Friedman

JEF/tm

Enclosure:

(1) List of Complainants

cc:

The Honorable Jeff Sessions
Attorney General of the United States
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

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COMPLAINANTS

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Pelham, AL 35124

Winwood Land Holdings, LLC
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Pelham, AL 35124